No.10- COURT'S ORDER WHETHER THE CASE IS OR IS NOT APPROVED FOR REPORTING

[Chapter VIII, Rule 32 (2) (b)]

Description of the Case.

W.P. NO. 1226 of 2001 (M/S)

Manoj Kumar and others
Versus
The Commissioner Saharanpur Division and others

A.F.R. (Approved for Reporting)
~~Not approved for Reporting~~

(B.S. Verma, J.)

Date: 08-03-2006 ***Initials of Judge***

THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

Writ Petition (M/S) No. 1226 of 2001
(Old CMWP No. 12533 of 2000)
(Under Article 226 of the Constitution of India)

1. Manoj Kumar S/O Deshpal (grand-son of Phool Singh)
2. Karanpal,
3. Krishan Pal, sons of Phool Singh,
   All residents of village Kuankhera,
   Pargana Mangalore, Distt. Haridwar.

… **Petitioner.**

Versus

1. The Commissioner Saharanpur Division,
   Saharanpur through additional Commissioner,
2. The Collector, through the Additional Collector, Haridwar.
3. State of U.P. through the Collector Haridwar.

… **Respondents.**

Sri M.S.Tyagi, learned counsel for the petitioners.
Sri Nand Prasad learned counsel for the respondents.

Dated 08-03-2006.

Hon'ble B.S.Verma, J.

The present writ petition has been filed by the petitioners for issue of writ, order or direction in the nature of certiorari quashing the judgment and order dated 3-1-2000 (Annexure No. 2) passed by respondent no.1 and order dated 11-1-1999 (Annexure No.1) passed by respondent no.2 respectively.

Brief facts of the case are that Bharat Singh was Bhumidhar of plots nos. 68 area 7-16-4 Bigha, plot no. 118 area 0-5-9 bigha, plot no. 122, area 6-3-17, total area 14-5-10 bigha. He executed a sale deed in favour of Deshpal (father of petitioner no.1) and Karan Pal Singh and Krishan Pal Singh (both sons of Phool Singh), who are petitioner nos. 2 and 3 on 26.8.1988 in respect of $1/8^{th}$ share of undivided portion of these plots.

Proceedings were initiated under Section 168A of the U.P.Z.A. and L.R.Act (***for Short the Act)*** regarding the transferred land by way of the sale deed dated 26.8.1988 on the ground that the

sale deed was hit by the provisions of Section 168A of the said Act and that the sale deed is void as per provision of Section 166 of the Act. It was held by the Additional Collector Haridwar (respondent no.2) in his judgment and order dated 11.1.1999 that the land under the sale-deed being fragment vested in the State under the provisions of Section 167 of the Act. It was also held that the sale is void ab initio being fragment. Aggrieved by the impugned order, the petitioners filed a Revision No. 42/98-99 before the Additional Commissioner Saharanpur. Ultimately, the revision was also dismissed by the Additional Commissioner Saharanpur Region, who confirmed the order of the Additional Collector passed in the proceedings under Sections 168 A and 167 of the Act in Case No. 2/97-98, State Vs. Manoj and others.

This fact has not been disputed that the sale deed was executed by Bharat Singh in favour of Deshpal Singh, father of the petitioner no.1 and Karanpal Singh and Krishnapal Singh, sons of Phool Singh. It is also not disputed that 1/8th undivided share was transferred by Bharat Singh.

Learned counsel for the petitioner Sri M.S.Tyagi has submitted that since it was a sale deed in respect of a share only, it would not amount to fragmentation of the holdings. Learned Standing Counsel has contended that Sri Bharat Singh transferred the land in question only of 1/8th share by way of sale deed, which is less than 3.125 acres, which is a fragment as defined in Section 3(8-a) (b) of the Act.

The only question involved in this case is as to whether the sale deed executed by Sri Bharat Singh is hit by Section 168A of the Act or not.

Provision for transfer of fragments is governed by Section 168-A of the Act, which reads as follows:-

“168-A. Transfer of fragments- (1) Notwithstanding the provisions of any law for the time being in force no person shall transfer whether by sale, gift or exchange any fragment situate in a consolidated area except where the transfer is in favour of tenure-holder who has a plot contiguous to the fragment or where the transfer is not in favour of any such tenure-holder the whole or so much, of the plot in which the person has bhumidhari rights, which pertains to the fragment is thereby transferred.

(2) The transfer of any land contrary to the provisions of sub-section (1) shall be void.

(3) When a bhumidhar has made any transfer in contravention of the provisions of sub-section (1) the provisions of Section 167 shall *mutatis mutandis* apply.”

The same controversy whether the sale-deed executed of a share which is less than 3.125 acres comes within the meaning of fragment has been decided by the Allahabad High Court in the case of ***Goverdhan Singh and others Vs. The Board of Revenue and others reported in 1992, R.D. page 117*** in which the judgment of the Hon’ble Apex Court in ***Mithlesh Kumari V. Fateh Bahadur Singh reported in 1991, R.D., page 184*** was referred. In that case, it was observed by the Hon’ble Supreme Court that ***“the object of the Section is to prevent fragmentation of land situated in a consolidated area and transfers that would result in fragmentation or further fragmentation shall be void and to such transfers Section 167 will mutatis mutandis be applicable.”*** In the case of Goverdhan Singh (supra), reliance was also placed on the decision of Allahabad High Court (***Santosh V. Board of Revenue U.P.*** *reported in* ***1971, R.D., page 518)*** and it was held in paragraph 6 of the judgment that ***“transfer of a share is distinguishable from a transfer of a portion of the plot in terms of area amounting to ‘fragment’ with the meaning of Section 168-A of the Act. The transferees of a defined share are, however, entitled to Co-share in the holding alongwith the transferor and if any of the co-sharers applied for division of holding which may result in fragmentation, the same would be taken care of by the law and fragmentation would be prevented as is evident from Section 178(1) of the Act read with related rules.”*** I am fortified in my view by the decision of the Allahabad High Court in *Goverdhan*

Singh case (supra) and I am of the considered view also that the sale deed executed by Sri Bharat Singh is not hit by Section 168 A of the Act and the learned additional Collector Haridwar as well as learned Additional Commissioner have erred in law in holding that the sale-deed executed by Sri Bharat Singh was hit by Section 168-A of the Act. The impugned judgment and orders suffer from manifest error of law being perverse and are liable to be set aside.

The writ petition succeeds and is allowed. The impugned judgment and order dated 11-1-1999 (Annexure-1) and judgment and order dated 3-1-2000 (Annexure No.2) passed by respondent nos. 2 and 1 respectively are quashed. The petitioners as a consequence shall remain recorded in the revenue records over the plots in dispute as co-bhumidhars along with Sri Bharat Singh. No order as to costs.

8-03-2006 **(B.S.Verma, J.)**
RCP